

“(1) whether it is necessary to amend the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) or any other environmental statute or regulatory requirements relevant to the disposal of vessels described in section 6(c)(2) of the National Maritime Heritage Act of 1994 (16 U.S.C. 5405(c)(2)) by September 30, 2006; and

“(2) any proposed changes to those requirements to carry out such disposals.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5403 of this title.

§ 5406. Definitions

In this chapter:

(1) Committee

The term “Committee” means the Maritime Heritage Grants Advisory Committee established under section 5404 of this title.

(2) National Trust

The term “National Trust” means the National Trust for Historic Preservation created by section 468 of this title.

(3) Private nonprofit organization

The term “private nonprofit organization” means any person that is exempt from taxation under section 501(a) of title 26 and described in section 501(c)(3) of title 26.

(4) Program

The term “Program” means the National Maritime Heritage Grants Program established by section 5403(a) of this title.

(5) Secretary

The term “Secretary” means the Secretary of the Interior.

(6) State Historic Preservation Officer

The term “State Historic Preservation Officer” means a State Historic Preservation Officer appointed pursuant to paragraph (1)(A) of section 470a(b) of this title by the Governor of a State having a State Historic Preservation Program approved by the Secretary under that section.

(Pub. L. 103-451, § 7, Nov. 2, 1994, 108 Stat. 4777.)

§ 5407. Regulations

The Secretary, after consultation with the National Trust, the National Conference of State Historic Preservation Officers, and appropriate members of the maritime heritage community, shall promulgate appropriate guidelines, procedures, and regulations within 1 year after November 2, 1994, to carry out the chapter, including regulations establishing terms of office for the initial membership of the Committee, direct grant and subgrant priorities, the method of solicitation and review of direct grant and subgrant proposals, criteria for review of direct grant and subgrant proposals, administrative requirements, reporting and recordkeeping requirements, and any other requirements the Secretary considers appropriate.

(Pub. L. 103-451, § 8, Nov. 2, 1994, 108 Stat. 4778.)

§ 5408. Savings provision

The authorities contained in this chapter shall be in addition to, and shall not be construed to

supercede or modify those contained in the National Historic Preservation Act (16 U.S.C. 470—470x-6).

(Pub. L. 103-451, § 9, Nov. 2, 1994, 108 Stat. 4778.)

REFERENCES IN TEXT

The National Historic Preservation Act, referred to in text, is Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§ 470 et seq.) of chapter 1A of this title. For complete classification of this Act to the Code, see section 470 of this title and Tables.

§ 5409. Designation of America's National Maritime Museum

(a) In general

America's National Maritime Museum is comprised of those museums designated by law to be museums of America's National Maritime Museum on the basis that they—

(1) house a collection of maritime artifacts clearly representing the Nation's maritime heritage; and

(2) provide outreach programs to educate the public about the Nation's maritime heritage.

(b) Initial designation of museums

The following museums (meeting the criteria specified in subsection (a) of this section) are hereby designated as museums of America's National Maritime Museum:

(1) The Mariners' Museum, located at 100 Museum Drive, Newport News, Virginia.

(2) The South Street Seaport Museum, located at 207 Front Street, New York, New York.

(c) Future designation of other museums not precluded

The designation of the museums referred to in subsection (b) of this section as museums of America's National Maritime Museum does not preclude the designation by law after October 17, 1998, of any other museum that meets the criteria specified in subsection (a) of this section as a museum of America's National Maritime Museum.

(d) Reference to museums

Any reference in any law, map, regulation, document, paper, or other record of the United States to a museum designated by law to be a museum of America's National Maritime Museum shall be deemed to be a reference to that museum as a museum of America's National Maritime Museum.

(Pub. L. 105-261, div. A, title X, § 1068, Oct. 17, 1998, 112 Stat. 2135.)

CODIFICATION

Section enacted as part of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, and not as part of the National Maritime Heritage Act of 1994 which comprises this chapter.

CHAPTER 75—HIGH SEAS FISHING COMPLIANCE

Sec.	
5501.	Purpose.
5502.	Definitions.
5503.	Permitting.
	(a) In general.

Sec.

- (b) Eligibility.
- (c) Application.
- (d) Conditions.
- (e) Fees.
- (f) Duration.
- 5504. Responsibilities of Secretary.
 - (a) Record.
 - (b) Information to FAO.
 - (c) Information to flag nations.
 - (d) Regulations.
 - (e) Notice of international conservation and management measures.
- 5505. Unlawful activities.
- 5506. Enforcement provisions.
 - (a) Duties of Secretaries.
 - (b) District court jurisdiction.
 - (c) Powers of enforcement officers.
 - (d) Issuance of citations.
 - (e) Liability for costs.
- 5507. Civil penalties and permit sanctions.
 - (a) Civil penalties.
 - (b) Permit sanctions.
 - (c) Hearing.
 - (d) Judicial review.
 - (e) Collection.
- 5508. Criminal offenses.
 - (a) Offenses.
 - (b) Punishment.
- 5509. Forfeitures.
 - (a) In general.
 - (b) Jurisdiction of district courts.
 - (c) Judgment.
 - (d) Procedure.
 - (e) Rebuttable presumption.

§ 5501. Purpose

It is the purpose of this chapter—

- (1) to implement the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993; and
- (2) to establish a system of permitting, reporting, and regulation for vessels of the United States fishing on the high seas.

(Pub. L. 104-43, title I, § 102, Nov. 3, 1995, 109 Stat. 367.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, and was translated as reading “this title”, meaning title I of Pub. L. 104-43, to reflect the probable intent of Congress.

EFFECTIVE DATE

Section 111 of title I of Pub. L. 104-43 provided that: “This title [enacting this chapter] shall take effect 120 days after the date of enactment of this Act [Nov. 3, 1995].”

SHORT TITLE

Section 1 of Pub. L. 104-43 provided that: “This Act [enacting this chapter, chapters 76 (§ 5601 et seq.) and 77 (§ 5701 et seq.) of this title, sections 971j, 971k, and 1826d to 1826g of this title, and sections 1980a and 1980b of Title 22, Foreign Relations and Intercourse, amending sections 971, 971b, 971c to 971e, 971h, 971i, 973g, 1383a, and 5002 of this title and section 1977 of Title 22, enacting provisions set out as notes under this section, sections 971, 971c, 1383a, 1801, 1821, 1823, 1826d, 5601, and 5701 of this title, and section 1980a of Title 22, and amending provisions set out as a note under section 1823 of this title] may be cited as the ‘Fisheries Act of 1995’.”

Section 101 of title I of Pub. L. 104-43 provided that: “This title [enacting this chapter] may be cited as the ‘High Seas Fishing Compliance Act of 1995’.”

§ 5502. Definitions

As used in this chapter—

(1) The term “Agreement” means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993.

(2) The term “FAO” means the Food and Agriculture Organization of the United Nations.

(3) The term “high seas” means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

(4) The term “high seas fishing vessel” means any vessel of the United States or subject to the jurisdiction of the United States used or intended for use—

(A) on the high seas;

(B) for the purpose of the commercial exploitation of living marine resources; and

(C) as a harvesting vessel, as a mother ship, or as any other support vessel directly engaged in a fishing operation.

(5) The term “international conservation and management measures” means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.

(6) The term “length” means—

(A) for any high seas fishing vessel built after July 18, 1982, 96 percent of the total length on a waterline at 85 percent of the least molded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that is greater, except that in ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline; and

(B) for any high seas fishing vessel built before July 18, 1982, registered length as entered on the vessel’s documentation.

(7) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(8) The term “Secretary” means the Secretary of Commerce.

(9) The term “vessel of the United States” means—

(A) a vessel documented under chapter 121 of title 46 or numbered in accordance with chapter 123 of title 46;

(B) a vessel owned in whole or part by—

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with article 92 of the 1982 United Nations Convention on the Law of the Sea and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of the United States law; and

(C) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

(10) The terms “vessel subject to the jurisdiction of the United States” and “vessel without nationality” have the same meaning as in section 1903(c) of title 46, Appendix.

(Pub. L. 104-43, title I, §103, Nov. 3, 1995, 109 Stat. 367; Pub. L. 106-562, title III, §305, Dec. 23, 2000, 114 Stat. 2807.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, and was translated as reading “this title”, meaning title I of Pub. L. 104-43, to reflect the probable intent of Congress.

AMENDMENTS

2000—Par. (4). Pub. L. 106-562 inserted “or subject to the jurisdiction of the United States” after “United States” in introductory provisions.

§ 5503. Permitting

(a) In general

No high seas fishing vessel shall engage in harvesting operations on the high seas unless the vessel has on board a valid permit issued under this section.

(b) Eligibility

(1) Any vessel of the United States is eligible to receive a permit under this section, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and

(A) the foreign nation suspended such authorization because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(B) the foreign nation, within the last three years preceding application for a permit under

this section, withdrew such authorization because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restriction in paragraph (1) does not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Secretary demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel.

(3) The restriction in paragraph (1) does not apply if the Secretary makes a determination that issuing a permit would not subvert the purposes of the Agreement.

(4) The Secretary may not issue a permit to a vessel unless the Secretary is satisfied that the United States will be able to exercise effectively its responsibilities under the Agreement with respect to that vessel.

(c) Application

(1) The owner or operator of a high seas fishing vessel may apply for a permit under this section by completing an application form prescribed by the Secretary.

(2) The application form shall contain—

(A) the vessel's name, previous names (if known), official numbers, and port of record;

(B) the vessel's previous flags (if any);

(C) the vessel's International Radio Call Sign (if any);

(D) the names and addresses of the vessel's owners and operators;

(E) where and when the vessel was built;

(F) the type of vessel;

(G) the vessel's length; and

(H) any other information the Secretary requires for the purposes of implementing the Agreement.

(d) Conditions

The Secretary shall establish such conditions and restrictions on each permit issued under this section as are necessary and appropriate to carry out the obligations of the United States under the Agreement, including but not limited to the following:

(1) The vessel shall be marked in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, or with regulations issued under section 1855 of this title; and

(2) The permit holder shall report such information as the Secretary by regulation requires, including area of fishing operations and catch statistics. The Secretary shall promulgate regulations concerning conditions under which information submitted under this paragraph may be released.

(e) Fees

(1) The Secretary shall by regulation establish the level of fees to be charged for permits issued under this section. The amount of any fee charged for a permit issued under this section shall not exceed the administrative costs incurred in issuing such permits. The permitting fee may be in addition to any fee required under any regional permitting regime applicable to high seas fishing vessels.

(2) The fees authorized by paragraph (1) shall be collected and credited to the Operations, Research and Facilities account of the National Oceanic and Atmospheric Administration. Fees collected under this subsection shall be available for the necessary expenses of the National Oceanic and Atmospheric Administration in implementing this chapter, and shall remain available until expended.

(f) Duration

A permit issued under this section is valid for 5 years. A permit issued under this section is void in the event the vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.

(Pub. L. 104-43, title I, § 104, Nov. 3, 1995, 109 Stat. 369; Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(2), was in the original “this Act”, and was translated as reading “this title”, meaning title I of Pub. L. 104-43, to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1855 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 5505, 5507 of this title.

§ 5504. Responsibilities of Secretary

(a) Record

The Secretary shall maintain an automated file or record of high seas fishing vessels issued permits under section 5503 of this title, including all information submitted under section 5503(c)(2) of this title.

(b) Information to FAO

The Secretary, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall—

- (1) make available to FAO information contained in the record maintained under subsection (a) of this section;
- (2) promptly notify FAO of changes in such information;
- (3) promptly notify FAO of additions to or deletions from the record, and the reason for any deletion;
- (4) convey to FAO information relating to any permit granted under section 5503(b)(3) of this title, including the vessel's identity, owner or operator, and factors relevant to the Secretary's determination to issue the permit;
- (5) report promptly to FAO all relevant information regarding any activities of high seas fishing vessels that undermine the effectiveness of international conservation and management measures, including the identity of the vessels and any sanctions imposed; and

(6) provide the FAO a summary of evidence regarding any activities of foreign vessels that undermine the effectiveness of international conservation and management measures.

(c) Information to flag nations

If the Secretary, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, has reasonable grounds to believe that a foreign vessel has engaged in activities undermining the effectiveness of international conservation and management measures, the Secretary shall—

(1) provide to the flag nation information, including appropriate evidentiary material, relating to those activities; and

(2) when such foreign vessel is voluntarily in a United States port, promptly notify the flag nation and, if requested by the flag nation, make arrangements to undertake such lawful investigatory measures as may be considered necessary to establish whether the vessel has been used contrary to the provisions of the Agreement.

(d) Regulations

The Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, may promulgate such regulations, in accordance with section 553 of title 5, as may be necessary to carry out the purposes of the Agreement and this chapter. The Secretary shall coordinate such regulations with any other entities regulating high seas fishing vessels, in order to minimize duplication of permit application and reporting requirements. To the extent practicable, such regulations shall also be consistent with regulations implementing fishery management plans under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(e) Notice of international conservation and management measures

The Secretary, in consultation with the Secretary of State, shall publish in the Federal Register, from time to time, a notice listing international conservation and management measures recognized by the United States.

(Pub. L. 104-43, title I, § 105, Nov. 3, 1995, 109 Stat. 370; Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (d), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5505 of this title.

§ 5505. Unlawful activities

It is unlawful for any person subject to the jurisdiction of the United States—

- (1) to use a high seas fishing vessel on the high seas in contravention of international conservation and management measures described in section 5504(e) of this title;
- (2) to use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under section 5503 of this title;
- (3) to use a high seas fishing vessel in violation of the conditions or restrictions of a permit issued under section 5503 of this title;
- (4) to falsify any information required to be reported, communicated, or recorded pursuant to this chapter or any regulation issued under this chapter, or to fail to submit in a timely fashion any required information, or to fail to report to the Secretary immediately any change in circumstances that has the effect of rendering any such information false, incomplete, or misleading;
- (5) to refuse to permit an authorized officer to board a high seas fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter or any regulation issued under this chapter;
- (6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection described in paragraph (5);
- (7) to resist a lawful arrest or detention for any act prohibited by this section;
- (8) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section;
- (9) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any living marine resource taken or retained in violation of this chapter or any regulation or permit issued under this chapter; or
- (10) to violate any provision of this chapter or any regulation or permit issued under this chapter.

(Pub. L. 104-43, title I, § 106, Nov. 3, 1995, 109 Stat. 371.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5506, 5507, 5508, 5509 of this title.

§ 5506. Enforcement provisions

(a) Duties of Secretaries

This chapter shall be enforced by the Secretary of Commerce and the Secretary of the de-

partment in which the Coast Guard is operating. Such Secretaries may by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, or of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under this section may (if the agreement so provides), authorize officers to enforce the provisions of this chapter or any regulation or permit issued under this chapter.

(b) District court jurisdiction

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii.

(c) Powers of enforcement officers

(1) Any officer who is authorized under subsection (a) of this section to enforce the provisions of this chapter may—

(A) with or without a warrant or other process—

- (i) arrest any person, if the officer has reasonable cause to believe that such person has committed an act prohibited by paragraph (6), (7), (8), or (9) of section 5505 of this title;
- (ii) board, and search or inspect, any high seas fishing vessel;
- (iii) seize any high seas fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter or any regulation or permit issued under this chapter;
- (iv) seize any living marine resource (wherever found) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 5505 of this title;
- (v) seize any other evidence related to any violation of any provision of this chapter or any regulation or permit issued under this chapter;

(B) execute any warrant or other process issued by any court of competent jurisdiction; and

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

(d) Issuance of citations

If any authorized officer finds that a high seas fishing vessel is operating or has been operated in violation of any provision of this chapter, such officer may issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (c) of this section. If a permit has been issued pursuant to this chapter for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(e) Liability for costs

Any person assessed a civil penalty for, or convicted of, any violation of this chapter shall be liable for the cost incurred in storage, care, and maintenance of any living marine resource or other property seized in connection with the violation.

(Pub. L. 104-43, title I, § 107, Nov. 3, 1995, 109 Stat. 372.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), was in the original “this Act”, and was translated as reading “this title”, meaning title I of Pub. L. 104-43, to reflect the probable intent of Congress.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5509 of this title.

§ 5507. Civil penalties and permit sanctions**(a) Civil penalties**

(1) Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 5505 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

(b) Permit sanctions

(1) In any case in which—

(A) a vessel of the United States has been used in the commission of an act prohibited under section 5505 of this title;

(B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under section 5503 of this title has acted in violation of section 5505 of this title; or

(C) any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued to or applied for by such vessel or person under this chapter, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on such permit.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a high seas fishing vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer. The Secretary may waive or compromise a sanction in the case of a transfer pursuant to court order.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

(c) Hearing

For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any dis-

strict in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Judicial review

Any person against whom a civil penalty is assessed under subsection (a) of this section or against whose vessel a permit sanction is imposed under subsection (b) of this section (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such penalty or sanction. The Secretary shall promptly file in such court a certified copy of the record upon which such penalty or sanction was imposed, as provided in section 2112 of title 28. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

(e) Collection

(1) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the matter shall be referred to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(2) A high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5505 of this title shall be liable in rem for any civil penalty assessed for such violation under subsection (a) of this section and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(Pub. L. 104-43, title I, § 108, Nov. 3, 1995, 109 Stat. 373.)

§ 5508. Criminal offenses

(a) Offenses

A person is guilty of an offense if the person commits any act prohibited by paragraph (6), (7), (8), or (9) of section 5505 of this title.

(b) Punishment

Any offense described in subsection (a) of this section is a class A misdemeanor punishable by a fine under title 18, or imprisonment for not more than one year, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any authorized officer,

or places any such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under title 18, or imprisonment for not more than 10 years, or both.

(Pub. L. 104-43, title I, § 109, Nov. 3, 1995, 109 Stat. 375.)

§ 5509. Forfeitures

(a) In general

Any high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any living marine resources (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 5505 of this title (other than an act for which the issuance of a citation under section 5506 of this title is a sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such living marine resources (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Jurisdiction of district courts

Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) Judgment

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this chapter or for which security has not previously been obtained. The provisions of the customs laws relating to—

- (1) the seizure, forfeiture, and condemnation of property for violation of the customs law;
- (2) the disposition of such property or the proceeds from the sale thereof; and
- (3) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter.

(d) Procedure

(1) Any officer authorized to serve any process in rem that is issued by a court under section 5506(b) of this title shall—

- (A) stay the execution of such process; or
- (B) discharge any living marine resources seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both

the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any living marine resources seized pursuant to this chapter may be sold, subject to the approval of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) Rebuttable presumption

For purposes of this section, all living marine resources found on board a high seas fishing vessel and which are seized in connection with an act prohibited by section 5505 of this title are presumed to have been taken or retained in violation of this chapter, but the presumption can be rebutted by an appropriate showing of evidence to the contrary.

(Pub. L. 104-43, title I, § 110, Nov. 3, 1995, 109 Stat. 375.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (c), are classified generally to Title 19, Customs Duties.

CHAPTER 76—NORTHWEST ATLANTIC FISHERIES CONVENTION

Sec.	
5601.	Representation of United States under Convention. <ul style="list-style-type: none"> (a) Commissioners. (b) Alternate Commissioners. (c) Representatives. (d) Alternate Representatives. (e) Experts and advisers. (f) Coordination and consultation.
5602.	Requests for scientific advice. <ul style="list-style-type: none"> (a) Restriction. (b) Requests and terms of reference described.
5603.	Authorities of Secretary of State with respect to Convention.
5604.	Interagency cooperation. <ul style="list-style-type: none"> (a) Authorities of Secretary. (b) Other agencies.
5605.	Rulemaking.
5606.	Prohibited acts and penalties. <ul style="list-style-type: none"> (a) Prohibition. (b) Civil penalty. (c) Criminal penalty. (d) Civil forfeitures. (e) Enforcement. (f) Jurisdiction of courts.
5607.	Consultative committee. <ul style="list-style-type: none"> (a) Establishment. (b) Membership. (c) Duties of committee. (d) Relationship to other law.
5608.	Administrative matters. <ul style="list-style-type: none"> (a) Prohibition on compensation. (b) Travel and expenses. (c) Status as Federal employees.
5609.	Definitions.
5610.	Authorization of appropriations.
5611.	Annual report.
5612.	Quota allocation practice. <ul style="list-style-type: none"> (a) In general. (b) Report. (c) "Straddling Fish Stocks Agreement" defined.

§ 5601. Representation of United States under Convention

(a) Commissioners

(1) Appointments, generally

The Secretary shall appoint not more than 3 individuals to serve as the representatives of

the United States on the General Council and the Fisheries Commission, who shall each—

(A) be known as a "United States Commissioner to the Northwest Atlantic Fisheries Organization"; and

(B) serve at the pleasure of the Secretary.

(2) Requirements for appointments

(A) The Secretary shall ensure that of the individuals serving as Commissioners—

(i) at least 1 is appointed from among representatives of the commercial fishing industry;

(ii) 1 (but no more than 1) is an official of the Government; and

(iii) 1, other than the individual appointed under clause (ii), is a voting member of the New England Fishery Management Council.

(B) The Secretary may not appoint as a Commissioner an individual unless the individual is knowledgeable and experienced concerning the fishery resources to which the Convention applies.

(3) Terms

(A) The term of an individual appointed as a Commissioner—

(i) shall be specified by the Secretary at the time of appointment; and

(ii) may not exceed 4 years.

(B) An individual who is not a Government official may not serve more than 2 consecutive terms as a Commissioner.

(b) Alternate Commissioners

(1) Appointment

The Secretary may, for any anticipated absence of a duly appointed Commissioner at a meeting of the General Council or the Fisheries Commission, designate an individual to serve as an Alternate Commissioner.

(2) Functions

An Alternate Commissioner may exercise all powers and perform all duties of the Commissioner for whom the Alternate Commissioner is designated, at any meeting of the General Council or the Fisheries Commission for which the Alternate Commissioner is designated.

(c) Representatives

(1) Appointment

The Secretary shall appoint not more than 3 individuals to serve as the representatives of the United States on the Scientific Council, who shall each be known as a "United States Representative to the Northwest Atlantic Fisheries Organization Scientific Council".

(2) Eligibility for appointment

(A) The Secretary may not appoint an individual as a Representative unless the individual is knowledgeable and experienced concerning the scientific issues dealt with by the Scientific Council.

(B) The Secretary shall appoint as a Representative at least 1 individual who is an official of the Government.

(3) Term

An individual appointed as a Representative—